



**In the Court of Magistrates (Malta)**

**As a Court of Criminal Judicature**

**Magistrate Dr. Nadine Lia**

**B.A; LL.M (Kent); LL.D, Barrister at Law (England & Wales)**

**Compilation Number: 548/2018**

**The Police**

**(Superintendent Trevor Micallef)**

**vs.**

**Savo Bogicevic**

Today the 30<sup>th</sup> November 2021

The Court

Having seen the charges against the accused Savo Bogicevic, son of Radenko and Darinka nee' Savljevic, born in Zvornik, Bosnia on the 16<sup>th</sup> of February 1992, resident at Isola Mare, Flt 5, Triq Henry F. Bouverie, Gzira and holder of Bosnian passport no. B19543321

And charge him with having in these islands on the 22<sup>nd</sup> August 2018 between four and half four in the morning (04:00a.m-04:30a.m) in St. George`s Road, St. Julian`s or in the vicinity:-

1. Without the intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Paul Forderreuther. (Art. 218 Chapter 9 of the Laws of Malta).
2. Accuse him further for having on the same date, time, place and circumstances provoked a tumult or an affray for the purpose of committing a homicide or a bodily harm to the detriment of Paul Forderreuther. (Art. 238 (b) Chapter 9 of the Laws of Malta).
3. Accuse him further for having on the same date, time, place and circumstances wilfully disturbed the public peace and order. (Art. 338(dd) Chapter 9 of the Laws of Malta).
4. Accuse him further for having on the same date, time, place and circumstances operated as a private guard agency or acted as a private guard or offered his services as such, without a license in accordance with the provisions of Act 389.

The court is kindly requested that if the accused is found guilty to provide for the safety of Paul Forderreuther according to article 383, Chapter 9 of the Criminal Law.

Having seen that in the sitting of 25<sup>th</sup> August 2018 the Court ordered that proceedings continue in the English language since the accused did not understand or speak Maltese.<sup>1</sup>

Having seen that the case had been assigned to this Court as currently presided on the 10<sup>th</sup> May 2019 by means of a decree of the Chief Justice Emeritus Dr. Joseph Azzopardi.<sup>2</sup>

Having seen that the in the sitting of 21<sup>st</sup> October 2019 the parties exempted the Court as currently presided from re-hearing once again all the witnesses who have already been heard by this Court as otherwise presided before this case was assigned to this Court as currently presided.<sup>3</sup>

Having seen that during the examination of the accused during the sitting of 25<sup>th</sup> August 2018 done in accordance to article 392(1) of the Criminal Code, the accused pleaded not guilty to the charges against him.<sup>4</sup>

Having seen that the Attorney General on the 3<sup>rd</sup> of May 2019 presented the formal accusatory document wherein the accused was charges with the following articles of law<sup>5</sup>:

- a. Article 215, 216 and 218 of Chapter 9 of the Laws of Malta;
- b. Article 238(b) of Chapter 9 of the Laws of Malta;
- c. Article 338(dd) of Chapter 9 of the Laws of Malta;
- d. Article 383 of Chapter 9 of the Laws of Malta;
- e. Article 25 of Chapter 389 of the Laws of Malta.

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<sup>1</sup> Page 23 of the act of proceedings

<sup>2</sup> Page 135-137 of the act of proceedings

<sup>3</sup> Page 139 act of proceedings

<sup>4</sup> Page 25 act of proceedings

<sup>5</sup> Page 133 act of proceedings

Having seen that during the sitting of 21<sup>st</sup> October 2019 the Articles of Law for judgment which were sent by the Attorney General on the 3<sup>rd</sup> May 2019 were read out, during which sitting the accused declared that he does not object to this case being tried and decided summarily.<sup>6</sup>

Having seen that prosecution rested its case in the sitting of 21<sup>st</sup> October 2019.<sup>7</sup>

Having seen that the defence rested its case in the sitting of 7<sup>th</sup> May 2021.<sup>8</sup>

Having taken cognisance of all the transcripts of testimonies tendered, evidence and documents exhibited before the Court as previously presided before it was assigned to this Court as presently presided.

Having seen the act of proceedings, examined all the documents exhibited and heard all the testimonies of the witnesses, including that of the accused which was given voluntarily;

Having heard final submissions by the parties during the sitting of the 20<sup>th</sup> July 2021<sup>9</sup>;

Having taken note of the additional note of observations of the accused;<sup>10</sup>

Having seen that the case has been adjourned for the pronouncement of judgment to be delivered today.

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<sup>6</sup> Page 139 act of proceedings

<sup>7</sup> Page 139 act of proceedings

<sup>8</sup> Page 220 act of proceedings

<sup>9</sup> Pages 229-237 act of proceedings

<sup>10</sup> Pages 238-258 act of proceedings

## **Having considered**

### **The facts of the case in brief**

The facts of this case took place on the 22<sup>nd</sup> August 2018 when it was reported to the St Julian's Police station by a certain Marcos Reguera Gomez and Paul Forderreuther that they were assaulted in front of Footloose Club in Paceville, St Julian's.

The complainants alleged that they were being pushed out of the club by the accused, who was a bouncer at the club and proceeded to follow them outside. Once they turned a corner from the club, the bouncer punched Paul Forderreuther to the ground. The bouncer left and as they were walking towards a taxi, the accused returned with a metal bar and other persons and started beating the victim once again. The incident stopped only when the police arrived and the accused and the other bouncers ran away.

## **Having considered**

### **Witnesses brought forward**

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings.

**Paul Forderreuther**, the injured party, testified on the 25<sup>th</sup> August 2018. He confirmed that on the 22<sup>nd</sup> of August 2018 at about 04:00hrs he was at Footloose Bar in St Julians in the company of a certain Marcos. According to the injured party, they were dancing inside the club, after having some drinks and then they were sent outside. After having walked about fifteen (15) meters, he was hit near the left eye and later in the hospital it resulted that there were two

broken bones and some internal bleeding. The injured party explained that he was sent out of the club because someone accused him of harassing a woman who according to him, he had never seen before. He had been dancing with four Dutch girls. The injured party could clearly identify the accused Savo Bogicevic as the aggressor. When asked to leave the club by the accused, the latter's demeanour had been courteous but then for some reason, he went out after the injured party onto the street, followed him for fifteen (15) to twenty (20) meters and punched him. The injured party reiterated that up until a few moments before the attack, the accused had asked them to leave the club in a polite manner and insisted that they were not thrown out of the club. He also insisted that he had not addressed the accused in any way and simply left the club when asked to do so - walking downhill towards a beer bar. According to the injured party, the accused was officially dressed all black as a security guard and he had seen him all the time that he was inside the club, standing close to them on the dancing area. On the night, there were a lot of people towards the front area of the club, about thirty (30) to fifty (50) as it was raining outside. The injured party stated that due to his injuries, he will require surgery in Germany. The injured party stated that he had identified the accused through pictures posted on Footloose's Facebook page. Accordingly, he presented a photograph indicating the accused. Under cross-examination, the injured party declared that when he got punched, he was looking behind towards Footloose. Furthermore, when he got hit, the injured party lost consciousness for some moments and the next thing he remembers is being on the ground being assisted by some people to get back on his feet. According to the injured party, he had been at the club for about two (2) hours before the incident and had drunk champagne and beer and possibly a vodka mixture. He explained that when reporting the incident to the Police, he described the aggressor as a bald headed man. The injured party denied that he had approached or been

approached by any girl other than the Dutch girls and specifically excluded that he had approached a bar-tender in any manner.

**Marcos Reguera Gomez** testified during the same sitting whereby he confirmed that on the 22<sup>nd</sup> August 2018 he had been in Paceville with Paul Forderreuther, the injured party. According to the witness, the incident occurred at about 04:30hrs and a few moments before, both he and the injured party were at Footloose bar. They had been dancing and then he saw his friend, that is, the injured party, being kicked out of the club by a bouncer and he followed him outside immediately. The witness clarified that at that stage, the bouncer had escorted the injured party out of the club in a civil manner. According to the witness, he could identify the person concerned as a bouncer because he was wearing a black uniform. Outside the club, after they had walked about twenty (20) meters down the street, the same bouncer came again running from the inside of the club and punched the injured party from the back and then started kicking him. After the assault, the witness helped to pick up the injured party with help from other persons and they got him some ice. As they were walking up the road again in order to get a cab return home, the witness could observe that four (4) or five (5) persons emerged from the club and that one of them was wielding a metal stick. The witness categorically denied that he or the injured party had done or said something which caused that kind of rejection. The witness could identify the accused as the aggressor. The witness further explained that on the night, the club was rather crowded. The witness explained that he knew the injured party before the incident through Erasmus and they had gone out together on the night. Furthermore, they were in the company of a group of Dutch girls who they had met earlier that night. The witness couldn't recall seeing the injured party approaching a female bartender at Footloose. Furthermore, according to the witness, at that time, all the bartenders were male. The witness stated that besides the Dutch

girls whom they were with, the injured party had been with another girl whom he had actually kissed. The witness denied that they had been involved in any verbal arguments with anyone whilst inside the club. Under cross-examination, the witness confirmed that the aggressor had approached the injured party from behind, where he saw him come running from behind and he immediately recognized him and supposed that he was going for his friend the injured party because he had just removed him from the club. At that point, the witness was about one (1) meter away from the injured party to the side. He confirmed that the injured party suffered injuries to his eye as a result of being punched and not as a result of being kicked.

**PS 1157 Bertly Aquilina**, stationed at the Police Licensing Office, testified on the 3<sup>rd</sup> October 2018. He explained that from searched carried out, the accused Savo Bogicevic does not hold a private guard license.

**PS 211 Michael Vella**, stationed at St Julian's Police Station, testified during the same sitting. He recounted that on the 22<sup>nd</sup> August 2018 a certain Marcos Reguera Gomez attended to St Julian's Police Station and reported that earlier that day at about 04:00hrs he was with a friend at Paceville and they had an argument with two bouncers. He stated that his friend Paul Forderrereuther was still in hospital and that he had grievous injuries. He also stated that he himself he had slight injuries but he did not wish to proceed further about that. The police went to hospital to take the version of events of Paul where he stated that he was inside Footloose Club and there was a girl that slapped him in the face. He was shocked about that reaction and he pushed her away and then she went to the bouncers. The bouncers told him to leave the club and then he and his friends left the club. After they had left the club, two (2) bouncers from the club went outside and hit him in the face. Then he went further up and came to the Police. The Police had insisted that an ambulance is called. The witness then



went inside Footloose club to ascertain who was working inside the club that night where he found the accused Savo Bogicevic working as a bouncer, Marko Francuski, also was working as a bouncer and Biljana Keneski, working as a bartender. The witness further explained that Paul Forderreuther had stated that first he was assaulted by one bouncer and then later on he was assaulted by another one. One of the bouncers allegedly hit him in the face and the other one allegedly used a metal stick. Furthermore, he gave a description of the one that hit him in the face, whom he alleged was the accused Savo Bogicevic. On the 23<sup>rd</sup> August 2018, the Police spoke with Savo Bogicevic where he gave a statement after having refused to consult with a lawyer. Under cross-examination, the witness clarified that he did not experience the incident first hand and recounted what has been reported by the injured party and Marcos Reguera Gomez.

**Senior Inspector Trevor Micallef**, stationed at Zejtun Police Station, also testified during the same sitting. He explained that on the 22<sup>nd</sup> August 2018 at about 07:00hrs, he was informed by PS 211 Michael Vella that he had received a report from two foreigners, a certain Marcos Reguera Gomez and Paul Forderreuther that previously at about 04:00am on the same date, they were assaulted by security guards from Footloose bar, whereby Paul Forderreuther was allegedly hit on the face by one of the security guards and some minutes later another person assaulted him with a bat. He informed as well that he went inside this club to see who was on duty at that time and he informed him that he found the accused, Savo Bogicevic together with Marko Francuski and Biljana Keneski. Subsequently, Marco Reguera Gomez was certified to be suffering from slight injuries and he waived criminal action against all parties involved, but on the other hand Paul Forderreuther was certified to be suffering from grievous injuries. The witness further explained that he sent for all three persons mentioned and they released a written and signed statement where

Biljana Keneski stated that she was in the club and when she was going near the deejay stand, Paul Forderreuther, the injured party, had touched her and she pushed him and one of the securities who is the accused proceeded to ask him to leave the club. Keneski's boyfriend, Marko Francuski, who was also a barman, stated that at the time of the incident he was downstairs counting money and therefore he had nothing to do with it. The accused Savo Bogicevic also released a statement after refusing the right to consult a lawyer. He stated that he just requested the injured party to leave the club but denied assaulting him. The witness explained that the incident was not captured on CCTV however the alleged aggressor was identified by the injured party through photos on Facebook, where the witness recognised him as being the accused Savo Bogicevic with whom he has already spoken. Upon his arrest, the accused released another statement where again he opted not to consult a lawyer.

The witness was reproduced for cross-examination on the 6<sup>th</sup> February 2020. He confirmed that notwithstanding the fact that a metal bar was mentioned by Marcos Reguera Gomez when reporting the incident, the Police did not locate any such metal bar. He clarified that he was not on the scene when the injured party accompanied the Police into the club in an attempt to identify the aggressor. The officer involved was PS 211. He also explained that nothing of relevance was observed from CCTV footage from the area.

**PS 850 Stephen Micallef**, stationed at St Julian's Police Station, testified on the 12<sup>th</sup> November 2018 whereby he confirmed that he has present when the accused refused the right to legal advice and could recognise his signature on the document exhibited in Fol. 21.

**WPC 376 Yana Buttigieg**, stationed at St Julian's Police Station, testified on the 12<sup>th</sup> November 2018 whereby she confirmed that she was present when the

accused refused the right to legal advice and could recognise her signature on the document exhibited in at page 21.

**WPC 166 Claire Amato**, stationed at Naxxar Police Station, testified on the 12<sup>th</sup> November 2018 whereby she confirmed that she has present when the accused refused the right to legal advice and could recognise her signature on the document exhibited in page 20.

**Marko Francuski** testified on the 12<sup>th</sup> December 2018 where he confirmed that he knows the accused Savo Bogicevic because they both worked at Footloose club at the time. The latter used to work as a security and a bartender. With reference to the incident at issue, the witness stated that all he knows is from what the others told him as at the time, he was counting cash after having finished his bar shift. What he was told was that someone had slapped his girlfriend Biljana Keneski and that he was removed from the club as a result.

The witness was reproduced for cross-examination on the 9<sup>th</sup> July 2020. He explained that his job at Footloose is as a bartender and also a supervisor. On the night of the incident, there were at least six (6) or seven (7) security officers on duty who would have been wearing plain black attire and have their hair cut very short. He recounted that despite it being August, it was bad weather and it was raining. When the incident occurred, he was downstairs in the office counting money from the cash. By the time his girlfriend Biljana Keneski had informed him about what had happened, about an hour had elapsed. Upon being questioned by the Court, the witness admitted to being angry about what had been done to his girlfriend and to going outside of the club to see if he could see the person responsible, however, since a lot of time had elapsed, nothing transpired of it. As he was going out, the witness saw the accused at his position near the deejay stand towards the middle of the club. The witness stated that

the accused told him about what had happened the following day when they were at the Police Station. According to the witness, the accused explained to him that he had simply taken the injured party to the doors and returned to his position.

The witness testified again on the 7<sup>th</sup> May 2021. The witness explained that he worked as a supervisor at the club and that bouncers could only move from their position upon his instructions but if there was a problem or fighting, they could leave their position to sort it out and escort the person to the security officer at the door – returning as soon as possible to the original position. The witness described the club as having a glass door at the entrance, the first bar on the left, on the left side you have the first bar, a DJ stand and dancing floor at the middle and another bar at the rear end. The DJ stand lies at about six or seven meters from the glass door. He explained that from the DJ stand, one has very good visibility of the club interior and also the street as it lies at an elevated position of about 1 meter.

**Biljana Keneski** also testified during the same sitting. She stated that she worked as a bartender at Footloose club and on the day of the incident, she had been called by her manager to provide the extracts from the cash. The manager was near the deejay stand. At a point she was touched on the behind by a person who clearly appeared to be drunk. She pushed him back and he retaliated by punching her in the face. At that point, the person was intercepted by security and lead out of the club. Straight afterwards, the security returned back to position at the deejay stand. The witness confirmed that the security concerned was the accused. According to the witness, the accused simply lead the person concerned to the door and left him there as there was another security at the door. The witness stated that she was not sure whether she could recognise and identify the person who had touched her.

The witness was reproduced for cross-examination on the 6<sup>th</sup> February 2020. She re-confirmed that the injured party had grabbed her behind and she had pushed him away. He then retaliated by punching her in the face. The security reacted immediately because he saw what was happening, proceeding to escort him out of the club in a very normal manner up to the door. The security then returned back to his original position near the deejay stand. She further explained that another two security officers were stationed at the door but she could not remember who they were. In all there were (6) security officers on duty. According to the witness, the ambience inside the club was quite dark.

The witness testified again on the 7<sup>th</sup> May 2021. She explained that she had been working at the club for two to three years before the incident. She affirmed that in this case, the accused simply came for the injured party, asked him to leave the club, followed him to the door and returned to his position. All this happened in a matter of roughly ten seconds and she excluded that there was any fighting or physical confrontation in the club. She explained that from the DJ stand, one has a very good view of the rest of the club as it lies at an elevated position, this is especially so when the dance floor is not very busy. Under cross-examination, she explained that on the night in question, there were not many people in the club as it was close to 4am, the time when clubs are required to stop playing music.

**Dr Alistair Bezzina** testified on the 1<sup>st</sup> April 2019 by means of a video link. The witness confirmed that he had issued the medical certificate exhibited at page 22 whereby it was certified that Paul Forderreuther had visited the accident and emergency department at Mater Dei hospital and it was established that he was suffering from a left superior lid laceration which was sutured, an infra-orbital

haematoma on the left with emphysema and a left orbital floor fracture. The nature of the injuries was classified as grievous.

The accused **Savo Bogicevic** testified on the 9<sup>th</sup> July 2020. He explained that he had opted not to consult with a lawyer prior to giving his two statements because at the time he did not feel that he was guilty in any way. When the alleged incident occurred, he had only been in Malta for three (3) months and his English was still very basic and was not able to express himself well. In fact he clarified that with reference to his statement, by the word "*grabbed*" he meant "*escorted*". At the moment when he escorted him out, the accused had not noticed exactly what had happened but simply saw that the injured party was unsteady on his feet and that Biljana Keneski was carrying cash to the manager. From the body language he could sense that there was a commotion, and since she was carrying cash, he needed to ensure that she was safe. He also declined that anybody had asked him to remove the injured party. Upon a question from the Court, the accused clarified that while he could see that there was a commotion as they were pushing each other, as a matter of fact, he did not see Biljana Keneski being either grabbed from the behind or slapped. The accused explained that the only contact which he had with the injured party was to escort him to the first door, where other colleagues were positioned, leaving him there and returning back to position near the deejay stand on the ground floor. He had radioed his colleagues to tell them that he was about to escort a person out as they would have been facing out of the club and thus unable to see what was happening inside. The whole operation took about ten (10) to fifteen (15) seconds as the injured party did not offer any resistance. Based on his professional experience, on how he smelled, and on the way that he acted, the accused perceived that the injured party had been drinking heavily. According to the accused, Biljana Keneski told him exactly what had happened about half an hour after he had removed the injured party from the club.

Furthermore, he did not know the injured party and had never seen him before. On the night there were seven (7) or eight (8) security personnel on duty at the club and each one is assigned a position with instructions not to move unnecessarily. Communication is maintained via radio and visibility so that when there is the need, other personnel are alerted as to the situation. Upon being questioned by the Court, the accused clarified that he could see the injured party outside using his mobile phone since both of the club's doors are made of glass and are thus transparent. Also, since at the time nearly all the patrons had left, there was a clear line of sight from the middle of the club up to the doors, the distance being six (6) meters at maximum. About thirty (30) to forty-five (45) minutes had elapsed between him escorting the injured party out and then seeing him using his mobile through the doors. Asked whether Biljana Keneski could actually see him escorting the injured party out, he replied in the affirmative but could not see beyond the door, firstly, due to the fact that at the time, the club was rather full and secondly, due to the fact that she is of a shorter stature. Asked when he was approached by the Police, the accused explained that this happened "*at the very end*" when the club was totally empty. The accused categorically denied hitting the injured party.

**Emanuel Sciriha**, Registrar of Civil Courts and Tribunals, testified on the 5<sup>th</sup> February 2021, whereby he confirmed that a judicial letter bearing number 2402/2020 was filed on the 7<sup>th</sup> August 2020 by the injured party Paul Forderreuther against the accused.

### **Having considered**

#### **The statement of the accused**

The first statement of the accused was taken a day after the incident on the 23<sup>rd</sup> of August 2018 at the St Julians Police Station.<sup>11</sup> This statement was taken by Inspector Trevor Micallef in the presence of PS211 Michael Vella after the accused was informed of his rights not to answer any questions made to me and his right to have a lawyer or legal procurator present during his interrogation.

The accused waived his right to have a lawyer of his trust present during his interrogation and after answering the questions put to him signed each page of the statement.<sup>12</sup>

The second statement of the accused was taken a day after the incident on the 25<sup>th</sup> of August 2018 at the St Julian's Police Station.<sup>13</sup> This statement was taken by Inspector Trevor Micallef in the presence of WPC166 Claire Amato after the accused was informed of his rights not to answer any questions made to me and his right to have a lawyer or legal procurator present during his interrogation.<sup>14</sup>

The accused waived his right to have a lawyer of his trust present during his interrogation and after answering the questions put to him signed each page of the statement.

In both his statements the accused went into detail about the circumstances of the incident.

In his first statement the accused explained that all he did was "*grabbed him and took him out, that is it, I did not punch him nothing, I just went to my position once*

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<sup>11</sup> Page 14-16 act of the proceedings

<sup>12</sup> Page 21 act of proceedings

<sup>13</sup> Page 17-18 act of the proceedings

<sup>14</sup> Page 20 act of proceedings



*again.....I did not do anything.....I did not even push him let alone punch him, I just told the guy to go out of the club.”<sup>15</sup>*

In his second statement he confirms that *“I never punched anyone.”<sup>16</sup>*

### **Having Considered**

The prosecution exhibited a medical certificate issued by Dr. Alastair Bezzina at Mater Dei hospital to Paul Forderreuther.<sup>17</sup> In this certificate, which was subsequently confirmed on oath when Dr. Bezzina tendered evidence, the nature of the injuries suffered by the victim were classified as greivous after he was examined during the same evening at 5.00 a.m.

In the victims evidence, the victim confirmed that he was given the certificate in representation of the injuries he sustained that evening.<sup>18</sup>

### **Having considered**

From the evidence of the victim Paul Forderrereuther it resulted that the victim was hit in his left eye and suffered two broken bones and loss of some eyesight. During his evidence he identified the accused as the man who hit me.

*“Magistrate: Are you sure that it was the accused who hit you?*

*Witness: I am one hundred percent sure that it was this man your honour.*

*Magistrate: Just a second. Can you please stand up? Can you have a closer look to the accused please?*

*Witness: Yes*

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<sup>15</sup> Page 15 act of proceedings

<sup>16</sup> Page 18 act of proceedings

<sup>17</sup> Page 22 act of proceedings

<sup>18</sup> Page 38 act of proceedings

*Magistrate: I repeat the question that I posed earlier on. Are you sure that the person who hit you and that caused your injuries was the accused?*

*Witness: Yes it was him.”<sup>19</sup>*

The victim also exhibited a photo he found of the accused on the Facebook profile of the club whilst he was in hospital.<sup>20</sup> In cross examination the victim further confirmed that he had described the accused to the police *“as a bald-headed man.”<sup>21</sup>*

The witness continues to explain the accused followed him out of the bar and punched him and that it was the same person who escorted them out of the club that hit him in the left eye.<sup>22</sup>

The victim explained that as a consequence of the injury he required surgery abroad to have a metal plate fitted so that his eye will not drop and subsequently lose his eyesight.<sup>23</sup>

Following this incident, a second one took place ten minutes after when another different man approached him from behind with a short metal bar and started fighting with him too.

From the evidence of Marco Reguera Gomez<sup>24</sup> it resulted that the argument inside the Footloose club took place at around 4.30am when the bouncer asked his friend, the alleged victim, to leave.

In open court the witness recognised and confirmed that it was the accused who punched the victim.<sup>25</sup>

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<sup>19</sup> Page 29-30 act of proceedings

<sup>20</sup> Dok PF1, Page 44 act of proceedings

<sup>21</sup> Page 40 act of proceedings

<sup>22</sup> Page 33 act of proceedings

<sup>23</sup> Page 35 act of proceedings

<sup>24</sup> Page 45-62 act of proceedings

<sup>25</sup> Page 48 act of proceedings

The witness corroborates the evidence of the alleged victim in that, after he was punched, they subsequently went to get a taxi and were approached again by a group of men from the Footloose club.

One of these men had a *“metal stick”*<sup>26</sup> and attacked his friend and himself.

The witness confirmed that he remembered his friend chatting to a girl and at one point kissing her but did not provide a reason as to why his friend was asked to leave the club since he was not acting aggressive. From his point of view there was no reason for the accused or the other men to attack them that evening.

Gomez in cross examination further states that the accused *“was running towards him”*<sup>27</sup> [his friend, the victim] when the attack took place. The witness confirms that he saw the accused hit his friend, the alleged victim.

*“He hit him with his like right hand from behind.... It was because he was punched.... The injuries in the eye is the result.”*<sup>28</sup>

These version of events were also corroborated by PS211 Michael Vella and Superintendent Trevor Micallef in their evidence.

Under cross examination Superintendent Trevor Micallef confirmed that the metal stick / iron bar was never found. With regards the issue of identifying the accused, the witness confirmed that it was the victim who identified and recognised who the perpetrator of the incident was.

From the evidence of Marco Francuski it was confirmed that the accused was working that evening at the Footloose club. The witness was not present during the incident, however, he claimed to have heard afterwards that his girlfriend,

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<sup>26</sup> Page 50 act of proceedings

<sup>27</sup> Page 59 act of proceedings

<sup>28</sup> Page 60 act of proceedings

Biljana Keneski, was slapped and the person who did it was kicked out of the club.

In cross examination he explained the procedure adopted by the club and how each employee had a stationed position and coordinated with other employees. In this case, the witness explained that the accused would have been able to take a club member to the door to escort them outside but would not leave the premises unless given permission by his supervisor.

From the evidence of Biljana Keneski it transpired that on the night of the incident, the alleged victim was drunk and had touched her from behind. After she pushed him away “...he punched me in the face. Security saw that so they lead him to the door...”<sup>29</sup> The witness, under cross examination, also confirmed that as the alleged victim was being escorted out of the club, there was no violence or fighting between them.<sup>30</sup> During the sitting of the 7<sup>th</sup> May 2021 the witness explained:

*“He just followed him to the door and came back to his position.”<sup>31</sup>*

The witness in her testimony continued to reiterate that the accused did not leave the premises, however when re-examined by the prosecution the witness could not recollect on which day of the week the incident took place.

### **Having Considered**

From the evidence brought forward the prosecution and the defence put forward different historical facts as to how carried out incident played out. It is not contested that an incident arose inside the Footloose club involving the victim and the accused’s girlfriend and it is not contested by either party that the accused escorted the victim and his friend outside of the club. What is being

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<sup>29</sup> Page 105 -106 act of proceedings

<sup>30</sup> Page 165 act of proceedings.

<sup>31</sup> Page 224 act of proceedings

contested by the parties is what happened in the moments outside of the club after the victim and his friend were escorted out of the club.

In brief the prosecution the victim and his friend contend that it was the accused who punched him in the eye whilst the accused and his girlfriend contend that he did not leave the premises and hence it could not have been him to punch him in the eye causing him grievous injuries.

It is not contested that the victim suffered two blows to his head – one was a punch in his eye and a second one followed by an iron bar. The medical certificate exhibited by the prosecution confirms that the victim suffered bodily harm, however the victim explained that the injury to his eye was caused exclusively by the punch he received from the accused and not from any other blow.

The accused and the witness Biljana Kereski contend in their evidence that the accused never left the club or went outside and this in line with club policy and procedures. The court notes however that in the statement of the accused he states:

*"I did not punch him, everyone saw me that I did not punch him. Albert saw me that I did not punch anyone, I only took ten seconds to take him out and went back to my position."*<sup>32</sup>

[emphasis of the court]

In the subsequent statement the accused also confirms that at one point he was outside of the premises.

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<sup>32</sup> Page 15 act of proceedings

*“All I have to say is after I took this person **out**, after a while I saw him holding his eye and I saw him calling, why should I stayed there if I knew that he was going to call the police, I would have run away.”<sup>33</sup>*

[emphasis of the court]

From this statement it is clear that the accused *did* leave his position and *did* leave the premises – albeit for a short period of ten seconds – but nonetheless did escort the victim **outside** of the club. The witness Biljana Kereski testified that she did not see the accused hit the victim or leave his position in the club, however this contradicts what the accused declared in the statement and could owe to the fact that whilst she was carrying out her work in the club she could not fully know where the accused was all the time.

According to the victim Paul Forderreuther and Marcos Reguera Gomez the assault took place directly **outside** of the club after they had been escorted outside and therefore it is credible for the court to establish that the accused escorted the victim and his friend outside of the club as stated in the accused’s statement. The victim and his friend were very certain on the identity of the assailant, so much so that the victim was able to identify his assailant from a photo and when confronted with the accused in open court he kept insisting that he was one hundred percent certain that it was the accused who was the person who punched him in the eye. This was further corroborated by his friend Gomez.

### **Further considered**

From the evidence brought forward it results that the prosecution is principally relying on the evidence of the victim and his friend to identify the accused as the person responsible for the punch to the victim’s eye.

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<sup>33</sup> Page 18 act of proceedings

In this case the prosecution is not relying solely on the identification by one witness but two, however the greatest emphasis has been on who the victim himself has identified.

It is practised doctrine that in penal matters *“hija regola tal-procedura kriminali li l-prova trid tkun shiha u soddisfacenti.”*<sup>34</sup> and that as a fundamental principle to the judicial process in criminal matters that the evidence brought forward by the prosecution has to be proof beyond reasonable doubt *“u jekk jeżisit dak id-dubju, dan imur favur l-akkuzat.”*<sup>35</sup> Having said that, this does not mean that the slightest of doubt is enough for the accused to be acquitted of all responsibility since the doubt has to be one based on a reasonable doubt.<sup>36</sup>

Whilst the prosecution rests primarily on the evidence of the victim and his friend, the Court makes reference to article 638(2) of the Criminal Code, which provides

*(2) Nevertheless, in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses.*

This means that if the evidence of one witness only is believed this can be considered sufficient proof. This principle was further espoused in the case **Pulizija vs Joseph Thorne**<sup>37</sup>

*“mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni talpersuna akkuzata. Imma l-Qorti, f’kaz ta’ konflitt fil-provi, trid tevalwa l-provi skond ilkriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f’hiex ser temmnju jew ma temmnju.”*

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<sup>34</sup> Pulizija vs Paolo Farrugia; Appell Kriminali Inferjuri; 1 ta’ Awissu 1959

<sup>35</sup> Repubblika ta’ Malta vs Jose’ Edgar Pena; Criminal Appeal Superior Court; 5.12.2012; and Repubblika ta’ Malta vs George Spiteri, Criminal Appeal Superior Court; 5.7.2002.

<sup>36</sup> Pulizija vs Philip Zammit; Criminal Appeal; 7.9.1994

<sup>37</sup> Court of Criminal Appeal (Inferior); 9<sup>th</sup> July 2003

This was further explained in the case **Il-Pulizija vs Matthew Borg**<sup>38</sup>

*“Illi fid-dawl tas-suespost u cioe’ x’ inhu l-ahjar prova, il-Qorti tissottolinea li huwa ben saput li l-apprezzament tal-provi ghandu jsir mhux biss b’mod spezzettat w individwali izda l-provi ghandhom jigu analizzati flimkien fl-assjem taghhom sabiex wiehed jara x’ inferenzi jew interpretazzjoni ragjonevoli u legali jista’ jaghti lil dawg il-provi hekk interpretati. Ma tistax tinstab htija jew nuqqas ta’ htija semplicement fuq analizi ndividwali jew separata talprovi. Dawn ghandhom jigu kkunsidrati kemm individwalment kif ukoll komplessivament.”*

The Court also makes reference to the case **Il-Pulizija vs Kieran Vella**<sup>39</sup>

*“ Issa meta l-Qorti tasal biex taghzel bejn verzjoni u ohra, naturalment jittiehdu in konsiderazzjoni id-diversi parametri fosthom il-komportament tax-xhieda biex wiehed jara kemm dak li qed jghidu ghandu missewwa jew le.”*

Therefore when the Court examines the entire act of proceedings in front of her, the Court has to determine if there is enough evidence to the level as determined by law and in accordance to developed jurisprudence. In this respect the Court makes reference to Lord Denning in his case **Miller vs Minister of Pension**<sup>40</sup> which states:

*“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing short of that will suffice”.*

## **Further considers**

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<sup>38</sup> Court of Criminal Appeal (Inferior); 10<sup>th</sup> November 2014

<sup>39</sup> Court of Criminal Appeal (Inferior); 6<sup>th</sup> October 2016

<sup>40</sup> 1974 – 2 ALL ER 372



The prosecution pressed charges against the defendant for having caused injuries against the victim in accordance to article 218 of the Criminal Code.

The Court makes reference to the case **Police vs Joseph Azzopardi** where the principle which regulates the classification of injuries for the purposes of criminal procedure were established:

*“Il-kwistjoni ta’ jekk offiza hiex wahda hafifa u ta’ importanza zghira, hafifa, gravi jew gravissima hi wahda ta’ fatt u ghalhekk rimessa ghall-gudikant talfatt (fil-kaz ta’ guri, ghalhekk, rimessa f’idejn il-gurati; fil-kaz odjern rimessa f’idejn il-gudikant ta’ l-ewwel grad...). Ma hix, ghalhekk, kwistjoni, li tiddependi neccessarjament jew esklussivament fuq “opinjoni medika”. It-tabib jew tobba jispjegaw x’irriskontraw bhala fatt; u, jekk il-qorti tippermettilhom, jistghu joffru l-opinjoni taghhom dwar, fost affarijiet ohra, kif setghet giet ikkagunata dik l-offiza, jew ma’ xhiex huma kompatibbli s-sintomi li jkunu gew klinikament riskontrati. Ikun jispetta mbaghad ghall-gudikant tal-fatt li, fid-dawl mhux biss ta’ dak li jkun xehed it-tabib izda fid-dawl tal-provi kollha, jiddetermina n-natura ta’ l-offiza.”<sup>41</sup>*

Furthermore in the case **Il-Pulizija vs Francis Dingli**<sup>42</sup> it was established:

*“... ghall-finijiet tal-artikolu 216 jekk hemmx sfregju jew le hi kwistjoni ta’ fatt rimessa ghall-gudikant ... u dan kien perfettament intitolat li jasal ghal konkluzjoni differenti minn dik li wasal ghaliha l-espert tal-Qorti.”*

The Court also makes reference to the case **Il-Pulizija vs Fortunato Sultana**<sup>43</sup> where a distinction was made between articles 216 and 218 of the Criminal Code wherein it was explained:

*“Mir-ritratti ezebiti u li ttiehdu ftit hin wara l-incident meritu ta’ l-akkuza, jirrizulta bl-aktar mod car li dana Curmi soffra offizi ta’ natura gravi fittermini ta’ l-Artikolu*

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<sup>41</sup> Court of Criminal Appeal, 30<sup>th</sup> July 2004

<sup>42</sup> Decided 12<sup>th</sup> September 1996

<sup>43</sup> Decided 5<sup>th</sup> February 1998

216(1)(b) tal-Kodici Kriminali. Skond din id-disposizzjoni, l-offiza fuq il-persuna hi gravi jekk, fost cirkostanzi ohra, iggib sfregju fil-wicc. Il-Ligi ma tirrikjedix li dana l-isfregju jipperdura ghal xi zmien partikolari, sfregju fil-wicc (jew fl-ghonq jew f'wahda mill-idejn) anke ta' ftit granet jibqa' sfregju ghal finijiet ta' l-imsemmija disposizzjoni, il-permanenza ta' l-isfregju hi relevanti biss meta, abbinata mal-gravita', taghti lok ghal hekk imsejjha "offiza gravissima" skond l-Artikolu 218(1)(b) tal-Kodici Kriminali."

The Court also makes to what was subsequently espoused in the judgment of **Il-Pulizija vs Antonio sive Anthony Randich**<sup>44</sup>,

"Kif din il-Qorti kellha l-oppportunita` li tirrimarka f'okkazzjonijiet ohra, l-isfregju ('disfigurement') fil-wicc (jew fl-ghonq jew fl-id) kontemplat fl-artikolu 216(1)(b) tal-Kodici Kriminali jista' jkun anke ta' natura temporanea, bhal, per eżempju, sakemm il-ferita tfiq. Huwa biss fil-kaz tal-hekk imsejjha 'offiza gravissima' fl-artikolu 218(1)(b) li l-ligi tirrikjedi l-permanenza (oltre lgravita`) ta' l-isfregju. Mir-ritratti esibiti din il-Qorti tara li l-ewwel Qorti setghet legalment u ragjonevolment tikkwalifika l-offiza f'wicc Sultana bhala sfregju (ghalkemm mhux gravi u anqas permanenti) peress li dik l-offiza kienet tiddisturba l-armonija tal-lineamenti tal-wicc u kienet tidher minn distanza normali."

The Court in weighing the evidence produced is not convinced that the prosecution has established that the victim suffered injuries to the degree established in article 218 of the Criminal Code and considers the prosecution to have succeeded only to the degree established in accordance to article 216 of the Criminal Code.

Article 218 of the Criminal Code raises the severity of the injury to that of a permanent level and goes a step further from the requirement of a deformity or disfigurement. In this case, the prosecution did not present proof or evidence that the injury sustained by the victim was of a such a nature that the requisites

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<sup>44</sup> Decided 2<sup>nd</sup> September 1999

of Article 218 would have been satisfied. The Court also deems that the prosecution did not take measures for the victim to be subsequently re examined by a medical legal expert who could have established the permanent nature or otherwise of the injuries sustained.

Therefore on the basis of all the evidence gathered and presented, this Court considered that the version given by the victim and Gomez is plausible and probable and the Court feels morally convinced that the prosecution has succeeded in proving its case to the extent required in criminal proceedings with respect to the first (but only in relation to article 216 and not article 218 of the Criminal Code), second and third charges and will proceed to find the defendant guilty of such charges.

### **The Fourth Charge**

From the evidence of PS1157 Bertli Aquilina<sup>45</sup> it resulted that the accused did not have any private guard licence and neither did he have a pending application with Police Licensing Office.

From the accused's statement and evidence it transpires that the accused was working in an entertainment club as a bouncer/security for Footloose club in Paceville on the night of the incident and was not in the club as a patron. Whilst the prosecution did not bring forward proof or otherwise of the accused's employment history at the time of the incident from the evidence of the accused and his girlfriend it transpires that during the night in question he was acting in the capacity of a private guard for the venue so much so that the backbone of this case revolves around his role in this capacity.

Article 25(b) of Chapter 389<sup>46</sup> states:

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<sup>45</sup> Page 72-72 act of proceedings

<sup>46</sup> As amended by XIV 2018.16 which came into force on the 8<sup>th</sup> May 2018

*Who acts or is employed as a private guard, a specialised private guard or a private guard at a place of entertainment or as a community officer in contravention of any of the provisions of this Act or of any licence issued thereunder shall be guilty of an offence and shall be liable, on conviction, to a fine (multa) not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) and to imprisonment for a term not exceeding six months or to both such fine and imprisonment;*

Therefore, the Court is going to proceed to find the accused guilty of the fourth charge.

### **Further Considered**

### **Punishment**

The Court in calibrating the punishment to be handed down took note, amongst other the following considerations:

1. The clean criminal record of the defendant;
2. According to article 238(b) the punishment established for bodily harm is to be increased by one degree;
3. The consequences that this incident has left on the victim which involved subsequent medical interventions.

### **Decide**

Therefore, after having seen the formal accusatory document where the accused was charged with the following articles of law:

- a. Article 215, 216 and 218 of Chapter 9 of the Laws of Malta;

- b. Article 238(b) of Chapter 9 of the Laws of Malta;
- c. Article 338(dd) of Chapter 9 of the Laws of Malta;
- d. Article 383 of Chapter 9 of the Laws of Malta;
- e. Article 25 of Chapter 389 of the Laws of Malta.

The Court finds the accused Savo Bogicevic guilty of the first (but only in relation to article 216 of Chapter 9 of the Laws of Malta), second, third and fourth charges and condemns him, for the first, second and third accusation, to a two (2) year term of imprisonment, which by the application of article 28A of Chapter 9 of the Laws of Malta, is to be suspended and shall not enter into effect for a term of four (4) years, and for the fourth accusation to a fine (*multa*) of four thousand Euros (€4,000).

The Court after having seen article 383 of Chapter 9 of the Laws of Malta and in order to provide for the safety of Paul Forderreuther and to ensure the keeping of the public peace places the offender Savo Bogicevic to enter into his recognizance for the sum of two thousand Euros (€2,000) for a period of twelve months from the date of judgment.

In terms of article 28A(3) of Chapter 9 of the Laws of Malta, the Court explained to the offender in ordinary language his liability and responsibilities during the operational period of the suspended sentence if he commits an offence punishable with imprisonment.

**Delivered today the 30<sup>th</sup> November 2021 at the Courts of Justice in Valletta, Malta**

**Dr. Nadine Lia**

**Magistrate**

**Lorianne Spiteri**

**Deputat Registratur**